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BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A CONDITIONAL)
USE PERMIT GRANTED BY THE CITY OF)
RAYMOND TO ROBERT BACKMAN,)

ERIC K. ERICKSON and BERNICE I.)
ERICKSON,)

Appellants,)

v.)

CITY OF RAYMOND, State of)
Washington, DEPARTMENT OF ECOLOGY)
and ROBERT BACKMAN,)

Respondents.)

SHB No. 86-61

FINAL FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

This matter is an appeal by Eric K. Erickson and Bernice I. Erickson of a shoreline conditional use permit issued to Robert Backman for placement of fill in the shorelines of the state near the Willapa River in Raymond, Washington. A pre-hearing conference was held, and as a result a pre-hearing order was issued March 24, 1987 which inter alia

1 specified the legal issues. A formal hearing was held on October 1, 1986
2 in Raymond.

3 Board members present were: Judith A. Bendor (Presiding), Wick
4 Dufford (Chairman), Lawrence J. Faulk, Nancy Burnett, Dennis J. McLerran
5 and Steven W. Morrison.

6 Mr. Eric Erickson pro se represented the appellants (who are
7 related). Attorney James Finlay represented respondent City of Raymond.
8 Assistant Attorney General Jay J. Manning represented respondent
9 Department of Ecology ("DOE"). Mr. Robert Backman represented himself,
10 the permit holder. A court reporter affiliated with Gene Barker &
11 Associates recorded the hearing.

12 A non-evidentiary site visit was held. At the hearing, argument was
13 made, sworn testimony was heard and exhibits were admitted and examined.

14 From the foregoing evidence and argument, the Board makes these:

15 FINDINGS OF FACT

16 I

17 On November 17, 1986 the City of Raymond issued a shoreline
18 conditional use permit to Robert Backman for the past placement of fill
19 for a mobile home and RV Park. This fill had been placed and the mobile
20 park developed between 1980 and November 17, 1986, without prior permit
21 authorization. DOE granted the permit on December 11, 1986. Mr. Eric
22 Erickson and Ms. Bernice Erickson filed a timely appeal of the permit.
23 The Ericksons are only challenging the fill that is on one lot, across
24 from the RV Park, along an unnamed creek directly adjacent to their
25

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(2)

1 single family residence. The lot currently has no structure on it.

2 II

3 The lot is within the 100-year floodplain of the River, as is much of
4 the City of Raymond. The lot is adjacent to a small unnamed stream which
5 eventually flows into the Willapa River. The small stream has low flows
6 of 1 cubic foot per second ("cfs") and high flows of 4 cfs, and during
7 floods carries these waters to the River.

8 III

9 The lot (alone) was filled with 180 cubic yards of fill material. At
10 fair market value this filling would have cost \$500. (Mr. Backman plans
11 in the future to place a single-family residence or mobile home on the
12 lot). It is undisputed that the fill for the entire area, including the
13 Mobile Home RV Park, met the criteria of a substantial development, as
14 defined by RCW 90.58.030(3)(e) and as such did require a shoreline
15 permit. The fill on the lot was part of that same permit.

16 IV

17 The shoreline conditional use permit issued by the City contains
18 several conditions, including the following:

- 19 1) Subsurface drainage be provided along
20 Vail Street to alleviate impact to neighboring
21 property, 2) The fill be contoured [sic.] to match
the original ground along the boundary with Vail
Street.

22 We find that the fill on the lot will to a very minor degree impede
23 the flow of flood waters. Such minor effect is lessened by the
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1 condition required for a drainage system. We find that ongoing
2 maintenance of the drainage system on the subject property is
3 necessary to provide such lessened effect. The property owner shall
4 have such responsibility. With such further condition, we find that
5 appellants have not proven that the fill solely or in combination
6 impairs the floodway capacity or efficiency, unduly increases flood
7 heights, or is dangerous to health, safety or general welfare.

8 V

9 Any Conclusion of Law deemed to be a Finding of Fact is hereby
10 adopted as such. From these Findings of Fact, the Board makes these

11 CONCLUSIONS OF LAW

12 I

13 Appellants, who have the burden of proof, presented evidence on
14 only a select few of the SMA regulatory and RSMP requirements, and we
15 only address those issues actually litigated.

16 The Pre-Hearing Order specified the legal issues on appeal as
17 follows:

18 Whether the Shoreline Management Act, ["SMA"; Chpt.
19 90.58 RCW] its implementing regulations [Chpt. 173-14
RCW] or the City of Raymond's Shoreline Management Act:

- 20 1. require(s) that a conditional use or variance permit
21 be issued before the proposed project can proceed;
- 22 2. require(s) that there be a 25' setback from ordinary
high water;
- 23 3. are/is violated by the placement of fill on the
24 subject property.

1 Note that the phrases "subject property" and "proposed
2 project" refer only to one lot within the RV park along
3 an unnamed creek, and do not refer to the entire RV
park. [. . .]
[End of Quote.]

4 II

5 The RSMP at 2.05 defines conditional use as:

6 [. . .] a use or the expansion of a use
7 permitted on shorelines which, because of certain
8 characteristics requires a special degree of control to
9 make it consistent with the intent and provisions of the
Act and these regulations and compatible with other uses
permitted on shorelines. Any use which requires a
substantial development permit to which "conditions" are
attached is also considered to be a conditional use.
[Emphasis added]

10
11 In this instance, the permit required conditions, including ones
12 imposed by the City as a part of the permit's local issuance. We
13 conclude a shoreline conditional use permit is therefore required
14 under RSMP 2.05. WAC 173-14-030(4). Such a conclusion is in harmony
15 with the goals of RSMP Section 18.01 regarding areas within
16 floodplains. (See parag. V, below.)

17 III

18 The RSMP defines shorelines of statewide significance as:

19 2.21 "Shorelines of statewide significance" means all
20 associated waters under tidal influence from the Willapa
River and its wetlands.

21 Wetlands are defined as:

22 2.29 "Wetlands" or "Wetland areas" means those lands
23 extending landward for 200 feet in all directions from
24 the ordinary high water mark and all marshes, bogs,
swamps, floodways, river deltas, and flood plains
associated with the streams, lakes and tidal waters which

1 are subject to the provisions of the Act and these
2 regulations. (Emphasis added)

3 We conclude that the lot is within a shoreline of statewide
4 significance as defined by the RSMP as it is within the Willapa River
5 floodplain, and is therefore also a wetland.

6 IV

7 The SMA provides that:

8 "Ordinary high water mark" on all lakes, streams,
9 and tidal water is that mark that will be found by
10 examining the bed and banks and ascertaining where the
11 presence and action of waters are so common and usual,
12 and so long continued in all ordinary years, as to mark
13 upon the soil a character distinct from that of the
14 abutting upland, in respect to vegetation as that
15 condition exists on June 1, 1971, as it may naturally
16 change thereafter, or as it may change thereafter in
17 accordance with permits issued by a local government or
18 the department: Provided, That in any area where the
19 ordinary high water mark cannot be found, the ordinary
20 high water mark adjoining salt water shall be the line
21 of mean higher high tide and the ordinary high water
22 mark adjoining fresh water shall be the line of mean
23 high water; [. . .] RCW 90.58.030(2)(b).

24 The RSMP definition, at 2.16, is almost verbatim the same. The
25 streams referred to above are those that by their flow come within the
26 reach of the SMA and the RSMP. In this instance, the referenced
27 stream is the Willapa River, not the unnamed creek.

28 The RSMP at Section 11.03 allows multi-family and single family
29 residences within shorelines, provided that no residential structure
30 shall be within 25 feet of the ordinary high water mark.

31 We conclude that none of the fill has been proven to be within 25

1 feet of the ordinary high water mark as defined by the SMA or RSMP.

2 V

3 The RSMP further provides that:

4 18.01 Within a flood plain there are areas subject to
5 periodic inundations severe enough to adversely affect
6 the public health, safety and general welfare. It is the
7 policy of this section to minimize hazards in flood
8 plains by restricting or prohibiting uses which are
9 dangerous to health safety or property in times of flood
or cause excessive increases in flood heights or
velocities. The regulations for carrying out this policy
and the boundaries of the Flood Plain are stated in
Ordinance #1210.

10 Ordinance #1210 Section 12, at No. 10 provides:

11 [. . .] No structure (temporary or permanent),
12 fill (including fill for roads and levees, deposit,
13 obstruction, storage of materials or equipment), or other
14 use shall be permitted which, acting alone or in
combination with existing or reasonably anticipated uses,
impairs the efficiency or the capacity of the floodway or
unduly increases flood heights.

15 WAC 173-14-140(1) provides in pertinent part:

16 (1) Uses which are classified or set forth in the
17 applicable master program as conditional uses may be
18 authorized provided the applicant can demonstrate all of
the following:

19 [. . .]

20 (d) That the proposed use will cause no
21 unreasonably adverse effects to the shoreline
22 environment in which it is to be located; and

23 (e) That the public interest suffers no
24 substantial detrimental effect.

25 VI

26 We conclude that the fill on the lot, as further conditioned by

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(7)

1 this Board (see Finding of Fact IV, above), has not been proven to
2 cause unreasonable adverse effects to the shoreline environment, or
3 cause the public interest substantial detrimental effect. Therefore
4 WAC 173-14-140(1)(d) and (e) have not been violated.

5 Moreover, as conditioned herein, appellant has not proven a
6 violation of RSMP at 18.01, or of Ordinance 1210, Section 12 at No. 10.

7 VII

8 Appellants have not presented evidence and therefore have not
9 demonstrated any violation of the SMA requirements for shorelines of
10 statewide significance, or of additional conditional use requirements
11 not quoted herein. RCW 90.58.020; WAC 173-14-140(1)(a) and (c).

12 VIII

13 Any Finding of Fact deemed to be a Conclusion of Law is hereby
14 adopted as such. From these Conclusions of Law, the Board enters this
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ORDER

The Shoreline conditional use permit, as further conditioned herein, is AFFIRMED.

SO ORDERED this 2d day of September, 1988.

SHORELINES HEARINGS BOARD

Judith A. Bendor
JUDITH A. BENDOR, Presiding

Wick Dufford
WICK DUFFORD, Chairman

Nancy Burnett
NANCY BURNETT, Member

Dennis J. McLerran [by B]
DENNIS J. McLERRAN, Member

Steven W. Morrison
STEVEN W. MORRISON, Member

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